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Supreme Court, U.S.
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No._____

IN THE
SUPREME COURT OF THE UNITED STATES

PATRICIA J. SKONIECZNY,
Petitioner

vs.

IN RE: PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON AND OF THE ESTATE OF BERTHA MACCAGLIA, AN ALLEGED INCAPACITATED PERSON
Respondents

On Petition For Writ Of Certiorari
To The Superior Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the ability of the Superior Court of Pennsylvania to render a Non Precedential Decision pursuant to 210 Pa. Code 65.37 (Internal Operating Procedures (I.O.P)) violate the Petitioner's, the alleged incapacitated person and the public's right to a meaningful appellate review when the Superior court deviated from the doctrine of Stare Decisis and refused to decide issues preserved on appeal and then buried its departure and failure in a Non-Precedential Decision thereby depriving the Petitioner, the alleged incapacitated person and the public of the right to due process and equal protection under the law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution?

2. Whether the Petitioner, her mother, the alleged incapacitated person and the public's rights to a meaningful appellate review are violated under the Fifth and Fourteenth Amendments to the United States Constitution when the Pennsylvania appellate courts refuse to address the most basic fundamental right to notice and whether the order was void ab initio because the court lacked personal jurisdiction.

TABLE OF CONTENTS

Page/s

QUESTIONS PRESENTED.....ii

TABLE OF AUTHORITIES.....v

PARTIES TO PROCEEDINGS.....1

OPINIONS BELOW.....1

JURISDICTION.....2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2-4

STATEMENT OF THE CASE.....4-5

REASONS FOR GRANTING THE WRIT.....6-7

ARGUMENT.....7-18

CONCLUSION.....19

APPENDIX.....20

SUPERIOR COURT OF PENNSYLVANIA ORDER DATED FEBRUARY 15, 2008.....A-1-A10

COURT OF COMMON PLEAS ORPHANS' COURT DIVISION ORDER OPINION JUNE 29, 2006 ..... A 11-A13

COURT OF COMMON PLEAS ORPHANS' COURT DIVISION ORDER OPINION AUGUST 21, 2006.....A14-A-17

COURT OF COMMON PLEAS ORPHANS' COURT DIVISION MEMORANDUM AND OPINION DECEMBER 7, 2006.....A18-A25

SUPREME COURT OF PENNSYLVANIA ORDER DATED SEPTEMBER 30, 2008.....A-26

TABLE OF AUTHORITIES

Cases **Page/s**

Commonwealth v. Bell 512 Pa. 334, 343, 516 A.2d 1172, 1177 (1986).....10,18

In re Estate of Melinda Morrow Hicks, 414 Pa. 131, 199 A.2d 283.....14

Statutes **Page/s**

Fifth Amendment to the United States Constitution.....2-3

Fourteenth Amendment to the United States Constitution.....3

20 Pa. C.S.A. 1511.....3,7,11,12

20 Pa. C.S.A. 1512.1.....17

20 Pa. C.S.A. §5513.....17

20 Pa. C.S.A. 5518.....16

210 Pa. Code 65.37.....2

Rules Cited

Pa. O.C. Rule 14.1.....3

Beaver County Local Rule L.R. 14 G.....4

PARTIES TO THE PROCEEDING BELOW

Pursuant to Rule 14.1(b) and Rule 29.6, the following list identifies all of the parties before the Superior Court of Pennsylvania. Respondents, Lynn Katekovich and Elizabeth Butera, are the court-appointed guardians over the person and estate of the Petitioner's and Guardians mother, the alleged incapacitated person, Bertha Maccaglia.

OPINIONS BELOW

On February 15, 2008, the "Non-Precedential Decision" of the Superior Court of Pennsylvania at No. 2053 WDA 2006, affirmed the Orders of the Court of Common Pleas, Orphans' Court Division at No. 04-06-606, issued on June 29, 2006 and August 21, 2006.
The Court of Common Pleas, Orphans Court Division's Memorandum and Order was issued pursuant to Pa. R.A.P. 1925 (a) on December 7, 2006.

The Superior Court's Non-Precedential Decision dated February 15, 2008, the Orphans Court's Memorandum and Opinion and Orders dated June 29, 2006, August 21, 2006 and December 7, 2006, are unpublished and reprinted in the Appendix hereto, under Appendix A.

On April 18, 2008, the Superior Court at No. 2053 WDA 2006, denied the Application for Reargument.
The Petition For Allowance of Appeal No. 255 WAL 2008, was denied by the Supreme Court of Pennsylvania on September 30, 2008.

JURISDICTION

The jurisdiction of the United States Supreme Court is invoked pursuant 28 U.S,C. 1257 (a) and the United States Constitution Art III Section 2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

210 Pa. Code 65.37

A. An unpublished memorandum decision shall not be relied upon or cited by a Court or a party in any other action or proceeding, except that such a memorandum decision may be relied upon or cited (1) when it is relevant under the doctrine of law of the case, res judicata, or collateral estoppel, and (2) when the memorandum is relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding. When an unpublished memorandum is relied upon pursuant to this rule, a copy of the memorandum must be furnished to the other party and to the Court.

The Fifth Amendment to the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, not be deprived of life, liberty, or property, without due process of law; nor shall

private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

20 Pa. C.S.A. §1511 requires in pertinent part that:

"W]ritten Notice of the petition and hearing shall be given in large type and in simple language to the alleged incapacitated person. . ." "[I]n addition, notice of the petition and hearing shall be given in such manner as the court shall direct to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he died intestate . . ."

Pa. O.C. Rule 14 Local Rules states:

The practice and procedure with respect to incapacitated persons' shall be as prescribed by

local rules which shall not be inconsistent with Rules 14.2-5.

Beaver County Local Rule L.R. 14. G, Petition states:

A Petition for the appointment of an emergency guardian of the person or estate of the alleged incapacitated person shall both set forth the information required in 20 Pa. C.S.A. §1511 and Rule 14.1, and shall be subject to the provision of 20 Pa. C.S.A. §1511 (including those relating to notification concerning the right to counsel and the appointment of such counsel for the alleged incapacitated person), *unless the Court directs in its order setting the time of the emergency hearing that the preparation and inclusion of such information is not feasible under the circumstances.* Such emergency petitions must, however, contain facts and information sufficient to enable the Court to determine that: (1) the person allegedly lacks capacity; (2) is in need of the appointment of an emergency guardian; and (3) the failure to make such appointment will result in irreparable harm to the person or estate of the alleged incapacitated person. Emphasis added.

STATEMENT OF THE CASE

None of the many statutory or due process safeguards required before the appointment of a guardian were followed.

This Petition for Writ of Certiorari arises from an ex parte emergency guardian hearing appointing guardians over the person and estate of the

Petitioner's mother, Bertha Maccaglia, ("Mrs. Maccaglia") an alleged incapacitated person without notice to either the Petitioner or her mother or without the opportunity to defend. On appeal, the Superior Court refused to address the ex parte Order entered on June 29, 2006. The Orphans Court never obtained personal jurisdiction over Mrs. Maccaglia and the Petitioner was denied her day in court.

The Pennsylvania courts deviated from the doctrine of Stare Decisis, to the detriment of the Petitioner and her mother's right to Notice when it refused to address whether the Orphans Court Order dated June 29, 2006 was void ab initio rendering any further orders invalid. The Pennsylvania courts disregarded the supreme authority of the United States Constitution, thereby denying due process and equal protection of the laws, and deprived the Petitioner and her mother of a meaningful appeal.

The Petitioner has raised the constitutionality of the court's rulings throughout all of the guardianship proceedings after discovery of such, including in the preliminary objections stage of the case and thereafter preserved those issues by objecting at hearing and filing exceptions in addition to preserving the issues by filing a statement of matters complained of on appeal. The issues were again raised before the Superior Court of Pennsylvania. The Pennsylvania Supreme Court denied the Petition for Allowance of Appeal. The Petitioner is now seeking the supervisory power by this Honorable Court.

REASONS FOR GRANTING THE WRIT

The within petition is a request for the issuance of a writ of certiorari to the Superior Court of Pennsylvania in order to review the ability of the Pennsylvania Superior Court to shield itself pursuant to 210 Pa. Code 65.37 of its Internal Operating Procedures from the duty to uphold the law and the obligation to render a Precedential decision which deprives the appellant/public to a meaningful appellate review in violation of their right to due process and equal protection guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

Rendering such a decision enables the appellate court to deviate from the doctrine of Stare Decisis and further ignore issues preserved on appeal and then bury its failure and departure in a Non-Precedential Decision thereby depriving the Petitioner, her mother and the public of the right to due process and equal protection under the law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution?

The title alone implies that the legal basis or lack thereof in any such particular case where a "Non Precedential Decision" is rendered may not be grounded on a correct legal basis or any legal basis at all. For if it was, it could be and would be and should be used as precedent.

All persons who appeal a decision of a lower court are Appellants and therefore similarly situated. All Appellants are not treated alike when

the appellate courts may issue a Precedential Decision to some and not to others. Or put another way, all Appellants should be treated equally and the decision issued by an appellate court should be grounded on law.

If such decision is based on and further supported as a matter of law, it should automatically render it a Precedential decision. A Non-Precedential decision allows the courts' to dispose of multiple cases in a manner contrary to the rights of litigants who are fortunate enough to receive a Precedential decision because such cases do not come under the scrutiny afforded in published Precedential Opinions. Therefore, the courts may dispose of the multiple caseloads without addressing and furthermore ignoring issues that it cannot support in a memorandum as a matter of law, which is a deprivation of due process and equal protection.

When the state courts refuse to adhere to the caselaw and statutes set in place by the legislature, there can be no meaningful appellate review and no relief without the exercise of this Court's supervisory power.

This Appellant respectfully asserts that the question presented for review, involves an issue of great public importance such as would justify a Writ Of Certiorari to the Superior Court of Pennsylvania pursuant to Supreme Court Rule No.10.

ARGUMENT

In its Order dated February 15, 2008, the Pennsylvania Superior Court as did the Beaver County Orphans Court ignored the most basic

fundamental right to due process by "Notice" in order to obtain jurisdiction as required by and pursuant to the Fifth and Fourteenth Amendments to the United States Constitution in addition to Pennsylvania statute 20 Pa. C.S.A. §1511 when it refused to rule and decide whether the lower court's order was void ab initio for failure to obtain jurisdiction over the person of Mrs. Maccaglia and allow the Petitioner her day in court to defend false allegations presented at the emergency guardian hearing. The Superior Court of Pennsylvania sanctioned and approved the continuing violation of a state statute.

Unaware to Petitioner and her mother, an alleged emergency guardian hearing was held on June 29, 2006 and by Order dated the same, Emergency Guardianship was appointed to Lynn Katekovich (hereinafter "Mrs. Katekovich") and Elizabeth Butera (hereinafter "Mrs. Butera")[1] of the Person and Estate of Mrs. Maccaglia respectively. The record shows that:

a) Petitioner and her mother were never served with "Notice" prior to the alleged emergency guardian hearing;

b) Petitioner and her mother were not present at the hearing;

c) Petitioner and her mother were not represented at the hearing.

d) Petitioner and her mother were never served with notice of the right to appeal.

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[1] Sisters of Petitioner Mrs. Skonieczny. It may be noted that another sister Mrs. Konarski also was party pro se on the lower court level. For simplicity and clarity, the Superior Court made reference to the Appellants even though only Mrs. Skonieczny appealed.

The Panel consisting of the Honorable Judges John L. Musmanno, Joan Orie Melvin, and John T. Kelly, failed to protect the Petitioner and her mother's most basic and fundamental Constitutional rights when the Panel's "Non Precedential Decision" affirmed the lower court's orders.

Additionally, the Superior Court refused to address the issue preserved and raised on appeal of whether an Order issued from an ex parte (alleged) emergency guardian hearing in which the Petitioner and her mother were never served with prior "Notice" was void ab initio.

The Supreme Court of Pennsylvania has set various Orphans Court rules in place for the protection of its citizens pursuant to the Pennsylvania Constitution. In addition, Beaver County also has its own set of Orphans Court rules. What good are they if the lower court refuses to require the parties to adhere to the rules for the protection of its citizen's Constitutional rights and what good are they if the appellate courts fail to protect its citizens from such circumvention of the rules by sanctioning the judicial proceedings in the Orphans' Court to the detriment of the rights of the parties.

The Petitioner and her mother were entitled to be treated equally and have their right to due process under the Fifth and Fourteenth Amendments to the United States Constitution. The Panel denied us those rights when the Panel affirmed the lower court's Order appointing Lynn Katekovich and Elizabeth Butera emergency guardians after

conducting an ex parte hearing without giving prior notice to her mother, and the Petitioner which would have afforded them the opportunity to be present and/or represented at that hearing. "The Petitioner and her mother were further denied their day in court and the ability to defend themselves.

The central issues in the matter presently before the Honorable Court is:

a) Whether the Orphans' Court acquired personal jurisdiction over Mrs. Maccaglia, the alleged incapacitated person and her daughter, the Petitioner when the lower court conducted the alleged emergency guardian hearing when no prior "Notice" was given and the Petitioner (and sister) and her mother had no prior knowledge of said hearing ;

b) Whether the Order issued out of the ex parte emergency guardian hearing was void ab initio?

The "Petition" presented on June 29, 2006 was not titled an "Emergency Petition" nor was the substance of it, an emergency. There were no averments in the Petition of an emergency nature that would warrant an immediate ex parte, emergency guardian hearing without Notice or Citation to Mrs. Maccaglia, the alleged incapacitated person or Notice to daughters Petitioner Mrs. Skonieczny and Appellant Mrs. Konarski.

> "The right to equal protection of the law under the Fourteenth Amendment guarantees that all persons similarly situated shall be treated alike." Commonwealth v. Bell, 512 Pa. 334, 343, 516 A.2d 1172, 1177 (1986).

The record shows that Mrs. Maccaglia was not represented by counsel or by anyone else and that she was never adequately advised of the true nature of the proceedings. The proceeding further denied Mrs. Maccaglia of her personal and property rights and liberty guaranteed by the Fifth Amendment to the United States Constitution.

The Court's June 29, 2006 Order did not include or waive the requirements set forth pursuant to Beaver County Orphans' Court Rule, L.R. 14. G., nor did it state that the Court found that service of notice of the hearing on appointment of an Emergency Guardian upon the alleged incapacitated person was not feasible under the circumstances.

Although the Court's Memorandum states that the Petition was presented pursuant to the provisions of Section 1511 of the Probate, Estates and Fiduciaries Code [20 Pa. C.S.A. §1511], the record shows otherwise.

20 Pa. C.S.A. §1511 requires that written notice be given in large type and simple language. As the record shows, neither Mrs. Maccaglia nor the Appellants were ever apprised of, served with or notified of the Petition prior to Presentment or the Emergency Hearing.

20 Pa. C.S.A. §1511 requires in pertinent part that:

> "W]ritten Notice of the petition and hearing shall be given in large type and in simple language to the alleged incapacitated person. . ." "[I]n addition, notice of the petition and hearing shall be given in such

manner as the court shall direct to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he died intestate . . ."

The Orphans' Court failed to comply with the Pennsylvania Supreme Court Orphans' Court Rule 14.1 and the Beaver County Local Rule L.R. 14. G. "Emergency Guardians" and never obtained personal jurisdiction over Mrs. Maccaglia, the alleged incapacitated person.

Pa. O.C. Rule 14.1, Local Rules states:

> The practice and procedure with respect to incapacitated persons' shall be as prescribed by local rules which shall not be inconsistent with Rules 14.2-5.

Beaver County Local Rule L.R. 14. G. Emergency Guardians dictates the mode and manner in how a Petition for an Emergency Guardian should be addressed. Specifically with regard to the **Petition, Citation, Hearing and Appointment of Emergency Guardian.**

The manner in which the Orphans' Court conducted the proceeding was not in accordance with or pursuant to both the Pa. O.C. Rule 14.1 and the Beaver County Local Rule L.R. 14 G.

Beaver County Local Rule L.R. 14 G. dictates the content of the **Petition** shall both set forth the information as required by Pa. C.S.A. §1511 and Rule Pa. O.C. 14.1 and be subject to the provisions of

§1511 relating to **notification** and right to counsel *unless* the Court directs in its order setting the time of the emergency hearing that the preparation and inclusion is not feasible. The Court's Order dated June 29, 2006 had no such direction.

The record shows that the Orphans' Court did not direct in its order setting the time of the emergency hearing that the preparation and inclusion of such information was not feasible under the circumstances as required.

Beaver County Local Rule, L.R.14 G. **Emergency Guardians,** requires that "emergency petitions" contain facts and information sufficient to enable the Court to determine the requirements stated. The "Petition" was insufficient and did not meet the three-prong requirement under L.R.14 G, to warrant an emergency guardian hearing.

The first prong of the three-prong requirement requires that the "emergency petition" contain a fact that the person allegedly lacks capacity. No medical doctor was present to testify to such. The only information other than the Petitioners bald allegations offered at that time was a letter attached to the Petition from her family doctor who had not seen or examined Mrs. Maccaglia in over a year.

Furthermore, the record shows that there was no evidence offered by a treating physician or a licensed psychologist that stated that it would be harmful to Mrs. Maccaglia to be present at the emergency guardian hearing as required.

The second and third prong requirements intertwine and overlap. The proposed guardians were required to show that Mrs. Maccaglia was in need of the appointment of an emergency guardian and the failure to make such appointment would result in irreparable harm to the person or estate of the alleged incapacitated person. There were no averments of an emergency nature that would warrant an immediate emergency guardian hearing the same time as presentment without notice or citation to Mrs. Maccaglia or her daughters.

While the Petition averred boilerplate language at paragraph No. 17 that the failure to make such appointment will result in irreparable harm to the person or estate of Mrs. Maccaglia, there was no specific allegations of what imminent situation necessitated an immediate emergency guardian hearing and/or what particular harm would result.

Appendix H of L.R.14.G. sets forth the requirements of a Preliminary Order of the Court appointing an Emergency Guardian.

The record shows that Mrs. Maccaglia was never issued a Citation for the Emergency Guardian Hearing. Without Citation, the Court lacked jurisdiction over the person.

The Supreme Court in In re Estate of Melinda Morrow Hicks, 414 Pa. 131, 199 A.2d 283 has held:

> "The statutory requirement of citation as the mandated original process for obtaining jurisdiction over the person is substantive, not

merely procedural, and it is not satisfied by compliance merely with the notice provision of the Incompetents' Estate Act of 1955, Feb. 28, 1956, P.L. (1955) 1154 §301, as amended 50 P.S. §3301 (Supp.1963) [now Title 20, Decedents, Estates and Fiduciaries]. The controlling issue here is not one of notice but rather of the more fundamentally essential prerequisite of jurisdiction over the person. It is by Citation that jurisdiction is conferred over the person. Notice, no matter how adequate, is not a permissible substitute for the original process directed by Section 704 of the Orphans' Court Act." Emphasis added.

The record is void of any Citation issued to Mrs. Maccaglia prior to the Emergency Guardian hearing. Although a Citation was issued to Mrs. Maccaglia after the ex parte hearing with regard to the Permanent Guardian hearing, the Supreme Court in *In re Hicks supra* opined:

"[N]othing done on appellant's behalf subsequent to the decree of incompetency cured the fatal defect of the initial absence of jurisdiction over her person. The court below never legally acquired jurisdiction over the person of appellant, either by valid service of process or appearance prior to the adjudication of incompetency. In the absence of jurisdiction over appellant, the decree of incompetency dated January 15, 1962, and the orders of October 2, 1963, are without validity. Emphasis added.

Mrs. Maccaglia was not absent from the Commonwealth nor was there any averments in the "Petition" to such. There was no deposition,

testimony or sworn statement by a physician or licensed psychologist that Mrs. Maccaglia's physical or mental condition would be harmed by her presence. In fact there was no evidence offered at the emergency guardian hearing that complied with the requirements of 20 Pa. C.S.A. §5518.

20 Pa. C.S.A. §5518 Evidence of incapacity states:

> To establish incapacity, the Petitioner must present testimony, in person or by deposition from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petition must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety, to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and as to why no less restrictive alternatives would be appropriate; and evidence regarding the probability that the extent of the person's incapacities may significantly lessen or change.

There was no evidence by testimony or deposition from a qualified individual as required. The only evidence offered attached to the Petition was a letter dated June 23, 2006 from Dr. Hein who admitted that he had not seen or examined Mrs. Maccaglia since the prior June 2, 2005. He was not

present at the emergency guardian hearing, nor could he testify if there was any change in Mrs. Maccaglia's condition for the better or worse because as he stated in his letter, he had not seen or examined her in over a year.

Beaver County Local Rule L.R. 14. G. sets forth the contents of the Order for Appointment of Plenary Emergency Guardian provided in Appendix I-1 to this Rule.

The Court's June 29, 2007 Order was not in accordance with the requirements set forth in Appendix I-1 or 20 Pa. C.S.A. §§5512.1 and 5513.

Specifically, 20 Pa. C.S.A. §5512.1 requires that at the conclusion of a proceeding in which the person has been adjudicated incapacitated, the court shall assure that the person is informed of his right to appeal and to petition to modify or terminate the guardianship. The Court's Order, dated June 29, 2006 said nothing to Mrs. Maccaglia and the Petitioner of their right to appeal the June 29, 2006 Order.

In as much as the role of the Appellate court is to review the record cold and assess and review the evidence offered, it would behoove anyone that the Appellate court could not see that the Orphans' Court lacked jurisdiction because the record clearly proves that that service was not made and in this case the Petitioner and her mother, had no knowledge of an action pending and therefore it was the duty of the Superior Court to reverse.

This Petitioner also respectfully questions and challenges the rule or law on a Constitutional

ground, the Appellate court's ability to render "Non-Precedential Decisions." The title alone implies that the legal stance or lack thereof in any such particular case where a "Non Precedential Decision" is rendered may not be grounded on a correct legal basis or any legal basis at all. For if it was, it could be and should be used as precedent. Rendering a "Non-Precedential" violates the right to equal protection under the law! This is of great public importance because Constitutional rights could be, and are, as in this case, circumvented and then such rights slip through the cracks and lay dead in between the pages of a Non-Precedential Decision".

The Fifth Amendment to the United States Constitution guarantees the right to due process.

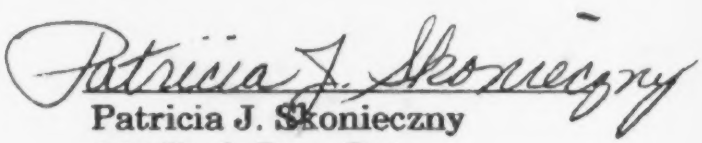
> In addition, "The right to equal protection of the law under the Fourteenth Amendment guarantees that all persons similarly situated shall be treated alike." Commonwealth v. Bell, 512 Pa. 334, 343, 516 A.2d 1172, 1177 (1986).

All persons who appeal a decision of a lower court are Appellants and therefore similarly situated. All Appellants are not treated alike when the appellate courts may issue a Precedential Decision to some and not to other Appellants. Or put another way, all Appellants should be treated equally and the decision issued by an appellate court should be grounded on law, which, if such decision is supported as a matter of law, should automatically render it a Precedential decision.

CONCLUSION

Based upon the foregoing, the abridgment and deprivation of constitutional rights caused by the Order Appointing Emergency and Permanent Guardians, it is respectfully requested that this Honorable Court grant this petition and directly address the Due Process and Equal Protection Clauses for all of the above reasons.

Respectfully submitted,



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APPENDIX

TABLE OF CONTENTS

SUPERIOR COURT OF PENNSYLVANIA ORDER DATED FEBRUARY 15, 2008.....A-1-A10

COURT OF COMMON PLEAS ORPHANS' COURT DIVISION ORDER OPINION JUNE 29, 2006 ..... A 11-A13

COURT OF COMMON PLEAS ORPHANS' COURT DIVISION ORDER OPINION AUGUST 21, 2006.....A14-A-17

COURT OF COMMON PLEAS ORPHANS' COURT DIVISION MEMORANDUM AND OPINION DECEMBER 7, 2006.....A18-A25

SUPREME COURT OF PENNSYLVANIA ORDER DATED SEPTEMBER 30, 2008.....A-26

NON-PRECEDENTIAL DECISION-SEE
SUPERIOR COURT I.O.P. 65.37

PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON AND OF THE ESTATE OF BERTHA MACCAGLIA, AN ALLEGED INCAPACITATED PERSON	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF PATRICIA SKONIECZNY	:	No 2053 WDA 2006

Appeal from the Order of September 28, 2006
In the Court of Common Pleas of Beaver County
Orphans' Court at No. 606 of 2006

BEFORE: MUSMANNO, ORIE MELVIN and KELLY, JJ

MEMORANDUM: FILED: FEBRUARY 15, 2008

This is a pro se appeal from an order appointing Appellees Lynn Katekovich and Elizabeth Butera as plenary permanent guardians of the person and estate of their mother, Appellee Bertha Maccaglia, an incapacitated person. We affirm.

In June of 2006, Appellees petitioned for the emergency appointment of themselves as guardians of the person and estate respectively of their mother on grounds of incapacity stemming from progressive Alzheimer's disease, vascular dementia, and severe peripheral neuropathy secondary to spinal stenosis, requiring 24 hour care. Also joining in the petition were Mrs. Maccaglia's husband, and four of her other

six children. After a hearing on the petition, an order was entered appointing Appellees as emergency guardians, appointing counsel for Mrs. Maccaglia, and scheduling a hearing on the appointment of a permanent guardian. The two remaining children, Appellants Patricia Skonieczny and Annette Konarski,[1] preliminarily objected, filing a motion to strike and/or dismiss Appellees' petition, and although conceding that their mother was in need of guardianship, proposed that they rather than Appellees be appointed. After a hearing the preliminary objections were denied,[2] and, after a further hearing the instant order was entered appointing Appellees permanent guardians of their mother's person and estate. This appeal followed challenging the trial court's jurisdiction over this matter as well as the sufficiency of the evidence to support the trial court's decision, and asserting various abuses of discretion by the trail court. We will address these seriatim, albeit not in the order presented.

We first note that our standard of review in determining the propriety of guardianship order is that we are

bound by the trial judge's findings of fact unless those findings are not based on competent

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[1] Although Patricia Skonieczny alone filed the notice of appeal and some of the documents in this matter, duplicates of others, e.g., a cross-petition and motion for reconsideration were also submitted by Annette Konarski in her own name. We therefore refer to Appellants in the plural.

[2] The trial court notes that on the date of the hearing on Appellants' preliminary objections, they filed separate petitions reiterating their mother's incapacity and the consequent necessity for appointment of guardian.

evidence. Conclusions of law, however, are not binding on an appellate court whose duty it is to determine whether there was a proper application of law to fact by the lower court.

In re v. Peery, 727 A.2d 539, 540 (Pa. 1999) (citations omitted).

Moreover,

> the appointment of a guardian lies within the discretion of the trial court and will be overturned only upon an abuse of discretion. Discretion must be exercised on the foundation of reason. An abuse of discretion exists when the trial court has rendered a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, bias, or ill will.

In re Duran, 769 A.2d 497, 506 (Pa. Super. 2001) (citations and internal quotation marks omitted).

Appellants argue that the trial court lacked subject matter jurisdiction to consider this action "under the facts and circumstances of this case." (Appellant's brief at 37). Their reasoning, which clearly confuses jurisdiction with venue and advances factual allegations as a basis on which to invalidate the court's authority, asserts that the guardianship proceeding was in reality a fabrication created by Appellees to aggrandize their control over the parties parents at Appellant's expense. However, such claims are irrelevant to jurisdiction, which is conferred by section 5512 (a) of the Decedents,

Estates and Fiduciaries Act.[3] That statutory section provides in pertinent part that "(t)he court, upon petition and hearing and upon the presentation of clear and convincing evidence may find a person domiciled in the Commonwealth to be incapacitated and appoint a guardian or guardians of his person or estate." Section 5512 (a) further confirms that "(a) guardian of the person or estate of an incapacitated person may be appointed by the court of the county in which the incapacitated person is domiciled, is a resident or is residing in a long-term facility." There was no dispute that Mrs. Maccaglia resides in Beaver County, in whose Court of Common Pleas these proceeding were held. Thus no issue of jurisdiction arises.[4] Moreover, Appellants acknowledge that their mother is incapacitated, thus their claim falls signally.

Appellants next argue that the evidence was insufficient to support the trial court's order because, contrary to the court's findings, the then current arrangements for their parents' care were adequate. They refer us to Peery, supra, for the proposition that "a person cannot be deemed incapacitated if his impairment is counterbalanced by friends or family or other support." Id. At 541. Thus they contend that because their mother is now well cared for, a

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[3] 20 Pa. C.S.A. §5501-55.

[4] In their reply Brief, Appellants argue that Appellees waived their right to argue that the court did have jurisdiction by failing to cite case law for their position, which was unsupported by evidence. We reiterate that the facts relied upon by Appellant are not germane to a discussion of jurisdiction which, as noted, is conferred by statutes in this instance.

guardian may not be appointed for her. Their reliance is misplaced.

Unlike Mrs. Maccaglia, the mental impairment of the person for whom guardianship was sought in Peery, "did not render her incapable of self care." Id. a 540. Thus the trial court dismissed the petition for adjudication of incapacity and appointment of a guardian. As our Supreme Court explained:

> The critical fact is whether or not the alleged incapacitated person needs a guardian. If the court finds that a person does not need a guardian, it does not matter whether he is incapacitated-the court cannot proceed to the appointment of a guardian. . . It is quite clear from 20 Pa. C.S.A. §§5512.1 (b) and (c) that appointment of a guardian must follow dual findings of incapacity and a need for guardianship services.

Id. at 541 (emphasis original). Here all parties have agreed on both these preconditions as the petition and cross-petition alleging Mrs. Maccaglia's incapacity attest, expressing the desires of the proponents for their respective appointments. Given the averments in Appellants' submissions to the court, even they apparently consider the evidence sufficient to warrant entry of a guardianship order, and contest only the court's selection of guardians.

Appellants next assign error to the trial court's decision to hold an emergency guardianship hearing in the absence of, and without notice to themselves as "parties of interest." (Appellants' Brief at 13) and without requiring attendance of Mrs. Maccaglia. They insist that none of the information in Appellees

petition justified such ex parte proceedings.

20 Pa. C.S.A. §5513 of the Act, which governs emergency guardianship, provides in pertinent part that:

> the court, upon petition and a hearing at which clear and convincing evidence is shown, may appoint an emergency guardian or guardians of the person or estate of a person alleged to be incapacitated, when it appear that the person lacks capacity, is in need of a guardian and a failure to make the appointment will result in irreparable harm to the person or estate of the incapacitated person.

This section is preface with language which dispenses with prior notice in such emergencies. That was the case here, as the court was presented with credible evidence that six of Mrs. Maccaglia's eight children, as well as her husband, were requesting the appointment of a guardian on a emergency basis, necessitated largely by Appellants' own behavior. Appellants content that because the petition did not include a specific averment of their behavior as justification for the appointment of a guardian, such evidence as was presented at the hearing was somehow too late to be considered. We are not persuaded, as Appellees' petition states that "failure to make an appointment of a Guardian will result in irreparable harm to the Person and Estate of Bertha Maccaglia," (Petition at §17) an averment sufficient, along with the description of their mother's ailments, to satisfy §5511(e) of the Act concerning those requirement of the contents of a

petition for guardianship. We reiterate that Appellants have never alleged their mother to be either competent or not in need of a guardian; their only quarrel has been with the court's choice of guardian. The court found credible evidence that their interference with the care being provided to her constituted the emergency.

As to Appellants' claims that their mother's constitutional rights were violated by the court's refusal to insist on her presence, at the same hearing they contest, counsel was appointed who would have been able to represent any infringement of their mother's rights had he felt it necessary to do so. Moreover, the conditions which led to an emergency hearing, in addition to their mother's infirmities, made her presence difficult in the first instance, and undesirable to the point of causing harm, in the second. We find no merit to these claims.

Appellants also assign errors in procedure to the permanent guardianship hearing, alleging that the trial court improperly: (1) permitted oral response to their preliminary objections; (2) permitted the deposition testimony of Mrs. Maccaglia's physician, Dr. Jeffrey Heim; and (3) did not require Mrs. Maccaglia's presence at the hearing. Again, we find no relief due.

As to the first of these, the trial court and counsel for Appellant's mother received the preliminary objections the morning of the permanent guardianship hearing after Appellants, who had been notified of the hearing date at least a month earlier, moved to continue

the hearing four days before it occurred, and were denied. On the day of the hearing, Appellants moved again, unsuccessfully, for a continuance alleging, *inter alia*, that they were unable to obtain the services of an attorney. They also filed cross-petitions for appointment of an outside agency as temporary guardians, and themselves as permanent guardians. All of these requests were denied, correctly, in our estimation.

In explaining its decision for the denials, the trial court noted its conclusion that "the preliminary objections were nothing more than a delay tactic which could not have inured to the benefit of Bertha Maccaglia, especially since the Court was presented with two (2) Cross Petitions, both of which agreed that Bertha Maccaglia was in need of guardianship services." (Trial Ct. Op. At 7). We see no reason to disagree with this assessment.

As to the matter of Dr. Heim's deposition testimony and the presence of Appellant's mother, as they themselves acknowledge, §5511 (a) (1) provides for the appearance of the incapacitated person unless "the Court is satisfied upon the deposition or testimony of or sworn statement by a physician . . that his physical or mental condition would be harmed by his presence." (emphasis added). The statute thus contemplates the introduction of deposition testimony for the purpose of informing the court of the condition of the incapacitated person. This occurred. Despite Appellants' claim that the testimony was

inadequate because the doctor had not seen Mrs. Maccaglia in a year, they provide nothing to indicate any improvement in her condition which would remove impediments imposed by her many disabilities, both mental and physical. Dr. Heim, who had been her physician for nine years, clearly described the deficits which incapacitate her, and which are reflected in her medical chart as kept by her caregivers.[5] She is unable to leave the house, as her spinal stenosis limits movement and causes intense pain; she is easily confused, and her memory is significantly impaired, although she does know her name; for all of these problems she requires 24 hour care. Dr. Heim testified that it would be of no benefit for her to attend the hearing. We find on the basis of these facts that the trial court properly admitted this deposition, and just as properly did not required the presence of Mrs. Maccaglia.

Finally, Appellant argues that the trial court abused its discretion in dismissing their "unopposed exceptions and not granting the relief sought in the unopposed motion for reconsideration." (appellants' Brief at 50).

To address these in reverse order, as Appellants concede, Pa. O.C.R. 7.1 (g) provides that "Exceptions shall be the exclusive procedure for review by the Orphans' Court of a final order, decree or adjudication. A party may not file a

[5] Appellee Lynn Katekovich is a registered nurse, and director of a health care business in which most of the family members except Appellants are involved to some extent. Much of Mrs. Maccaglia's care has been provided through this entity.

motion for reconsideration of a final order." As Appellants' motion for reconsideration was procedurally invalid, Appellees had no obligation to respond to it.

As to the court's denial of the exceptions, those of Appellants' claims which were preserve for appeal have been addressed above; any others have been waive.

Order affirmed.

Judgment Entered

/s/ Eleanor L. Valecko
Deputy Prothonotary

Date: February 15, 2008

COURT OF COMMON PLEAS
BEAVER COUNTY
PENNSYLVANIA
ORPHANS' COURT DIVISION

PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON AND OF THE ESTATE OF BERTHA MACCAGLIA, AN ALLEGED INCAPACITATED PERSON	:	No. 606 of 2006

ORDER OF COURT
APPOINTING EMERGENCY GUARDIAN

AND NOW, this 29th day of June, 2006, a hearing in this case having been held, the Court finds upon the presentation of clear and convincing evidence as follows:

1. Bertha Maccaglia is unable to manage her financial resources and to meet essential requirements for her physical health and safety.
2. Bertha Maccaglia is in need of plenary guardianship services, both of her person and estate.
3. Failure to appoint an Emergency Guardian of her person and her estate will result in irreparable harm to her person and to her estate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Bertha Maccaglia is in need of guardianship services and that LYNN KATEKOVICH be and is hereby appointed Emergency Guardian of the Person of Bertha Maccaglia AND that ELIZABETH BUTERA be and is hereby appointed Emergency

Guardian of the Estate of Bertha Maccaglia until further Order of this Court for the purpose of taking any and all actions necessary to provide for her personal health, safety and welfare and to gather and protect all of her assets and make payment of any and all bills and debts.

The time and place of hearing on the Petition for appointment of a Permanent Guardian of the Person and Estate of the alleged incapacitated Person are fixed for the 21st day of August, 2006, at 9:15 A.M. prevailing time, in Court Room No. 1, Beaver County Court House, Beaver, Pennsylvania.

Compensation will be paid to counsel for Petitioner at the rate of $175.00 per hour, together with reimbursement for any costs advanced, all from the funds of the Incapacitated Person.

The Guardian of the Estate shall act as Representative Payee on behalf of Bertha Maccaglia for the receipt of any Social Security benefits to which she is entitled.

The Guardian is granted leave to invade principal to pay the foregoing expenses, and for the expenses associated with the daily care and maintenance of the Incapacitated Person.

Attorney Joseph Olimpi, is appointed Counsel for Bertha Maccaglia.

At least twenty days' written notice of the hearing on the appointment of the Permanent Guardian shall be given to Bertha Maccaglia, the alleged Incapacitated Person, by serving her personally with the Citation, a copy of the foregoing Petition and this Order of Court and at least twenty days' written notice of the Petition and hearing on the appointment of the Permanent Guardian shall also be given to the next of kin and other parties in interest named in the Petition either personally or by registered or certified mail.

BY THE COURT

/s/ John D. McBride

COURT OF COMMON PLEAS
BEAVER COUNTY
PENNSYLVANIA
ORPHANS' COURT DIVISION

PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON AND OF THE ESTATE OF BERTHA MACCAGLIA, AN ALLEGED INCAPACITATED PERSON	:	No. 606 of 2006

ORDER OF COURT
APPOINTING PERMANENT GUARDIAN

AND NOW, this 21st day of August, 2006, it appearing to the Court that Bertha Maccaglia was served with a Citation and notice of this Hearing on June 29, 2006, the Court finds upon the presentation of clear and convincing evidence as follows:

1. Bertha Maccaglia has been diagnosed with peripheral neuropathy, mild cognitive impairment, severe spinal stenosis, vascular dementia, and short term memory loss.
2. There are insufficient supports available to assist Bertha Maccaglia in overcoming such limitations and there exists no less restrictive alternative mechanism for decision making other than the appointment of a Plenary Guardian.
3. That based on the total incapacity of Bertha Maccaglia to receive and evaluate information effectively and to make or communicate decisions, a Plenary Guardian of the Person and of the Estate are required on a permanent basis.

NOW THEREFORE, based on clear and convincing evidence supporting the foregoing findings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Bertha Maccaglia be and hereby is adjudged a totally incapacitated person.

LYNN KATEKOVICH is hereby appointed Permanent Plenary Guardian of the Person of Bertha Maccaglia AND that ELIZABETH BUTERA is hereby appointed Permanent Plenary Guardian of the Estate of Bertha Maccaglia until further Order of this Court.

The Permanent Plenary Guardian of the Person shall have authority to consent to the general care, maintenance, and custody of Bertha Maccaglia without exception.

The Permanent Plenary Guardian of the Person shall assure that Bertha Maccaglia receives appropriate services and shall assist her in developing self-reliance and independence.

The Permanent Plenary Guardian of the Estate shall have the authority to marshal all of Bertha Maccaglia's income and assets, pay bills and manage her financial affairs as she could do herself if she had not been adjudged incapacitated.

Compensation shall be paid to counsel for Petitioner at the rate of One Seventy-five ($175.00) Dollars per hour, together with reimbursement for any costs advances, all from the funds of the Incapacitated Person.

The Permanent Plenary Guardian of the Estate shall act as Representative Payee on behalf of Bertha Maccaglia for the receipt of any Social Security benefits to which she is entitled.

The Permanent Plenary Guardian of the Estate is granted leave to invade principal to pay the

forgoing expenses, and for the expenses associated with the daily care and maintenance of the Incapacitated Person.

An inventory shall be filed within ninety (90) days. The Guardian shall submit to the Court a Report within one (1) year from the date of this Order and every year thereafter.

A surety bond in the amount of $-0- shall be presented for approval by the Guardian of the Estate.

Bertha Maccaglia, an Incapacitated Person, has the right to appeal this Order of Court by filing exceptions with the Clerk of the Orphans' Court Division within twenty (20) days of the date of this Order by filing an appeal with the Prothonotary's Office of the Superior Court of Pennsylvania within thirty (30) days of the date of this Order or to petition this Court for a hearing to review or terminate the adjudication of incapacity and guardianship herein established.

If Bertha Maccaglia was not present at the Hearing on the adjudication of her incapacity and the appointment of a Guardian, then Petitioner shall serve upon, and read to Bertha Maccaglia, the Statement of Rights attached to this Order of Court and marked as Exhibit A. Proof of service of the Statement of Rights shall be filed by the Guardian with the Clerk of the Orphans' Court within ten (10) days of the date of this Order.

BY THE COURT

John D. McBride
J.

EXHIBIT "A"

Statement of Rights

STATEMENT OF RIGHTS

AN ORDER HAD BEEN ENTERED BY A JUDGE OF THE COURT OF COMMON PLEAS OF BEAVER COUTNY, ORPHANS COURT DIVISION, WHEREBY YOU HAVE BEEN ADJUDICATED AN INCAPACITATED PERSON AND UNABLE TO CARE FOR YOURSELF AND/OR MANAGE YOUR PERSONAL AFFAIRS. YOU HAVE THE RIGHT TO FILE EXCEPTIONS WITHIN TWENTY (20) DAYS OF THE DATE OF THE COURTS ORDER WITH THE ORPHANS COURT OR THE RIGHT TO FILE AN APPEAL WITHIN THIREY (30) DAYS OF THE DATE OF THE DENIAL OF EXCEPTIONS.

IN ADDITION, YOU MAY PETITION THE COURT AT ANY FUTURE TIME TOMODIFY OR TO TERMINATE THE GUARDIANSHIP IF THERE IS A CHANGE IN YOUR CAPACITY OR IF YOR GUARDIAN FAILS TO PERFORM HIS/HER DUTIES IN ACCORDANCE WITH THE COURTS ORDER.

IF YOU WISH TO APPEAL THE ORDER OR TO PEITION THE COURT TO MODIFY OR TERMINATE THE GUARDIANSHIP, YOUR ARE ENTITLED TO BE REPRESENTED BY ANATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, THE COURT MAY APPOINT ONE TO REPRESENT YOU. IF YOU CANNOT AFFORD AN ATTORNEY, THE SERVICES OF AN ATTORNEY WHOM THE COURT MAY APPOINT FOR YOU WILL BE PROVIDED AT NO COST TO YOU.

IN THE COURT OF COMMON PLEAS OF
BEAVER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

PETITION FOR THE APPOINTMENT	:	No. 606
OF A GUARDIAN OF THE PERSON	:	of 2006
AND OF THE ESTATE OF BERTHA	:	
MACCAGLIA, AN ALLEGED	:	
INCAPACITATED PERSON	:	

MEMORANDUM OPINION

McBride, J December 7, 2006

This Opinion is being filed in compliance with Pennsylvania Rules of Appellate Procedure, specifically, Rule 1925 (a).

In order to properly address the issues raised by Patricia J. Skonieczny in her appeal to the Superior Court of Pennsylvania, it is necessary to provide a historical and factual recitation of the case.

On June 29, 2006, this Court was presented with a Petition for the Appointment of a Guardian of the Person and of the Estate of Bertha Maccaglia, an alleged incapacitated person. The Petition was presented to this Court pursuant to the provisions of Section 5511 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S.A. §5511). The Petition was filed by two (2) of the daughters of the alleged incapacitated person, and the Petition contained joinders to the relief requested by the alleged incapacitated person's husband, as well as four (4) other adult children of the alleged incapacitated person. (The well-pleaded

averments of the Petition aver that the relief requested, i.e., appointment of Petitioners Lynn Katekovich and Elizabeth Butera, as Guardians of the Person and of the Estate of their mother, Bertha Maccaglia, is the joint request of her husband and six (6) of her eight (8) adult children.) Two (2) of the adult children of Bertha Maccaglia, Patricia Skonieczny and Annette Konarski, did not join in the Petition. At the time of presentment, the Petitioners also requested appointment of the Petitioners as Emergency Guardian of the Person and of the Estate Bertha Maccaglia. Following hearing, this Court did make appointment of Lynn Katekovich as Emergency Guardian of the Person and Elizabeth Butera as Emergency Guardian of the Estate of their mother. The Order also appointed counsel, Joseph M. Olimpi, Esquire, for the alleged incapacitated person, and, finally, hearing was scheduled on the Petition for Appointment of a Permanent Guardian for the 21st day of August, 2006.

Following entry of the Order on June 29, 2006, the Citation and Order were served on the alleged incapacitated person, as well as her husband and all eight(8) of her children. On August 17, 2006, the Court received and denied Motions from Patricia Skonieczny and Annette Konarski to continue the hearing scheduled for appointment of Permanent Guardians. On the following day, August 18, 2006, the same two parties filed Preliminary Objections in the form of Motions to Strike and/or Dismiss. The Preliminary Objections were argued and denied on August 21, 2006 prior to hearing on the Petition for Appointment of Permanent Guardians.

It is of import to note that on the date set for hearing, the Court also was provided with "Cross Petitions" wherein Annette Konarski and Patricia Skonieczny also aver that their mother is incapacitated and in need of a Guardian of her Person and of her Estate. In fact, at Paragraph No. 23 of both Cross Petitions, it is stated that th eCross Petitioner does not oppose the issue of incapacitation with regard to Bertha Maccaglia, only the appointment of the particular Emergency/Permanent Guardians of the Person and Estate of Bertha Maccaglia.

With pleadings before it in which Bertha Maccaglia's husband and all eight (8) of her children were alleging that she was incapacitated and in need of guardianship services, the Court convened a hearing on August 21, 2006. At that hearing, counsel for the Petitioners moved into evidence the deposition of Jeffrey P. Hein, M.D. Dr. Hein testified that he has been Bertha Maccaglia's physician for nine (9) years. In 2002, she was diagnosed with Alzheimer's Dementia by Dr. Carey, a neurologist. Dr. Hein then testified that Mrs. Maccaglia "has had a fairly progressive decline since that time . . .because of the Alzheimer's . . ." Dr. Hein stated that the last time he saw the patient was one (1) year ago (2005), and he diagnosed her as having Alzheimer's-type Dementia. When asked if, in his opinion, within a reasonable degree of medical certainty, Mrs. Maccaglia's ability to receive and evaluate information effectively and communicate decisions was impaired to such a degree that she is totally unable to manage her financial resources and to meet the essential requirements for her physical

health and safety, Dr. Hein provided a one-word answer, "Absolutely". Finally, Dr. Hein testified that there would be no benefit realized for Mrs. Maccaglia to attend the hearing.

Petitioners also offered the testimony of Lynn Katekovich and Judy Hamilton who is the Supervisor for Older Adult Protective Services, who testified that her agency conducted an investigation and was in the process of finding that Mrs. Maccaglia was not in need of Protective Services, meaning that she was not then in need of intervention from outside the family and present caregivers to prevent risk of abuse, neglect or exploitation.

Following hearing on August 21, 2006, this Court did Order that Bertha Maccaglia be adjudged a totally incapacitated person and appointed Lynn Katekovich as the Permanent Guardian of her Person, and Elizabeth Butera as the Permanent Guardian of her Estate, both until further Order of Court. Exceptions were filed by Patricia Skonieczny on September 11, 2006, and the Order denying Exceptions was appealed to the Superior Court of Pennsylvania by Patricia Skonieczny on October 25, 2006.

DISCUSSION

This Court directed Patricia Skonieczny to file a More Concise Statement of Matters Complained Of, and the Statement was filed on November 2, 2006. The issues raised will be addressed in the order raised.

The first issue raised is whether this Court lacks subject matter jurisdiction. According to the Petition and the Cross Petitions filed, and as found

by this Court upon review of the evidence presented, Bertha Maccaglia resides at 24 Grandview Avenue, Baden, Beaver County, Pennsylvania 15005. The Probate, Estates and Fiduciaries Code provides, at Section 5512 (a) (20 Pa. C.S.A. 5512 (a)),

> "A guardian of the person or estate of an incapacitated person may be appointed by the Court of the county in which the incapacitated person is domiciled, is a resident or is residing in a long-term care facility."

There is no doubt whatsoever that this Court had jurisdiction to decide the Petition and the Cross Petitions filed with the Court. The first issue must be denied.

The second issue raised in this appeal is that this Court erred by denying the Exceptions and the Motion for Reconsideration. The Court's Order and the Court's discussion of its ruling, as revealed by review of the transcript of the August 21, 2006 hearing, clearly establish the correctness and necessity of the Court's findings and decision. Nothing raised in the Exceptions caused the Court to rule differently, and the Court never arrived at a decision on the Motion for Reconsideration filed because Patricia Skonieczny filed this appeal before decision on the Motion for Reconsideration, thereby removing this case from the jurisdiction of this Court and vesting the same in the Honorable Appellate Court. The Exceptions were properly denied.

The third issue raised relates to alleged error of this Court at the time of presentment of the

Petition on June 29, 2006 and the concurrent request for appointment of Emergency Guardians. Section 5513 of the Probate, Estates and Fiduciaries Code

(20 Pa. C.S.A, §5513) governs the authority of the Court in appointing an Emergency Guardian or Guardians.

> " The Court, upon petition and hearing at which clear and convincing evidence is shown, may appoint an emergency guardian or guardians of the person or estate of a person alleged to be incapacitated, when it appears that the person lacks capacity, is in need of a guardian and a failure to make such appointment will result in irreparable harm to the person or estate of the alleged incapacitated person. The provisions of Section 5511, including those relating to counsel, shall be applicable to such proceedings, except when the court has found that it is not feasible in the circumstances. ."

At the hearing on June 29, 2006, the Court was presented with evidence that Mrs. Maccaglia's husband and six (6) of her eight (8) adult children joined in the request for Emergency Guardians to be appointed. The Court was further provided with evidence which the Court found to be clear and convincing, that the two (2) adult children not joining in the Petition presented the necessity, through their behavior, to appoint Guardians on an emergency basis. The Court did not commit any error by considering the Petition, on an emergency basis, on June 29, 2006, without notice to either of the two (2) non-consenting children, nor by requiring Bertha

Maccaglia to be personally present.

Similarly, the fourth issue raised alleges error of this Court in conducting the August 21, 2006 hearing. It is claimed that this Court erred by dismissing Preliminary Objections without briefs or scheduled Argument. This Court has explained its jurisdiction rationale in appointing Emergency Guardians, and the Court finds that the Preliminary Objections were nothing more than a delay tactic which could not have inured to the benefit of Bertha Maccaglia, especially since the Court was presented with two (2) Cross Petitions both of which agreed that Bertha Maccaglia was incapacitated and in need of guardianship services. Decisions on those grounds were paramount for the Court on August 21, 2006. Counsel for Petitioners also complied with the requirements of Section 5511 in offering deposition testimony of Dr. Hein, and Dr. Hein opined that it would not be of benefit to Mrs. Maccaglia to be present at the hearing. It should further be noted that several members of Mrs. Maccaglia's family were present for the hearing, and her legal interests were represented at both the hearing for emergency appointment and at the hearing for appointment of Permanent Guardians by Attorney Olimpi, who is one of the most qualified counsel employed by Older Adult Protective Services and the Office on Aging, as well as service by appointment of the Court in these types of proceedings. This Court certainly did not err in the conduct of the August 21, 2006 hearing.

In her fifth issue, Patricia Skonieczny alleges that this Court erred as a matter of law or abused its discretion in refusing to find a conflict of interest.

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE PERSON AND OF THE ESTATE OF BERTHA MACCAGLIA, AN ALLEGED INCAPACITATED PERSON	:	No. 255 WAL 2008

Petition for Allowance of Appeal from the Order of the Superior Court

PETITION OF: PATRICIA SKONIECZNY

ORDER

PER CURIAM

AND NOW, this 30th day of September, 2008, the Petition for Allowance of Appeal is hereby **DENIED**.

A true copy Patricia Nicola
As of: September 30, 2008
Attest: /s/ Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania